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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,489	08/10/2001	Antony Keith Van Dyk	TJK/174	5569

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EXAMINER
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NORDMEYER, PATRICIA L

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 03/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/831,489

Applicant(s)

VAN DYK ET AL.

Examiner

Patricia L. Nordmeyer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 52-62, 64-77, 79-87, 106-108 and 110-120 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 52-62, 64-77, 79-87, 106-108 and 110-120 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 17, 2004 has been entered.

### ***Claim Objections***

2. Claim 79 is objected to because of the following informalities: Claim 79 is dependent on canceled claim 78. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 52, 65, 80 and 106 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "an anti-skinning layer located entirely on an internal surface" in claims 52

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and 106 is unclear, which render the claims vague and indefinite. It is unclear from both the claim language and specification what the above statement means. Is the anti-skinning layer suppose to be completely encompassed by the container? Is one entire internal surface of the container suppose to be covered by the anti-skinning layer?

The phrase "an anti-skinning layer being located entirely on the internal surface" in claim 80 is unclear, which renders the claim vague and indefinite. It is unclear from both the claim language and specification what the above statement means. Is the anti-skinning layer suppose to be completely encompassed by the container? Is one entire internal surface of the container suppose to be covered by the anti-skinning layer?

The phrase "the anti-skinning layer retains a layer of the formulation" in claims 52, 65 and 106, which render the claims vague and indefinite. It is unclear from both the claim language and the specification what the above statement means. Is the anti-skinning layer retaining the liquid part of the formulation? Is anti-skinning layer in contact with the formulation, the vapor or both?

Correction/clarification is required.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 52 – 54, 57, 58, 62, 64 – 68, 71, 72, 76, 77, 79, 106, 114 and 115 are rejected under 35 U.S.C. 102(b) as being anticipated by Allbrighton (GB 2,306,429 A).

Allbrighton discloses an anti-skinning layer that prevents the formation of a skin on the surface of paint, a formulation prone to skinning, in a tin (Page 1, lines 2 – 7). Air from the outside environment is prevented from contacting the surface of the paint (Page 1, lines 28 – 31) due to the fact that the insert is contact with a portion of the inner surface of the can (Figure 8 and Page 2, lines 25 - 27). However, the formulation vapor is retained within the container in contact with the formulation by spacing the anti-skinning layer away from the surface of the paint while be located on an internal surface (Abstract, lines 2 – 3 and Figure 8). The formulation in the tin is a solvent based gloss paint or any other item which would form a skin on the surface due to the loss of solvent (Page 1, lines 17 – 18 and Page 2, lines 13 – 18). The disc is formed with a foam lining (Page 3, lines 3 – 6 and Page 6, lines 3 – 12), providing insulation from the outside air. Paint is sold in a variety of size containers including 2.5 liters (Figure 1), thereby requiring a variety of sizes of discs for the containers (Page 7, lines 27 – 32). The disc is removed to use the paint in the can and is placed back into the container when the paint use is finished (Page 2, lines 19 – 29).

7. Claims 52 – 55, 64 – 69, 106 and 112 are rejected under 35 U.S.C. 102(b) as being anticipated by Graham et al. (USPN 4,691,838).

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Graham et al. disclose a moist pad in combination with a lid, which prevents the formation of a skin on the surface of paint, a formulation prone to skinning in a tin (Column 5, lines 10 - 13). Air from the outside environment is prevented from contacting the surface of the paint due to the fact that the membrane is contact with a portion of the inner surface of the can and the foil lid, the anti-skinning layer that is located entirely on an internal surface, (Figure 1, #14 and 16) while allowing the formulation vapors of the paint to gather in the perforations (Figure 1, #17). The formulation in the tin is a solvent based gloss paint or any other item which would form a skin on the surface due to the loss of solvent (Column 4, lines 54 - 55). The disc is removed to use the paint in the can and is placed back into the container when the paint use is finished (Column 4, lines 65 - 68). As can be seen by Figures 5 - 8, the membrane of the tray is chosen from a variety of different textures.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 56, 70, 107, 108, 110, 111, 113 and 118 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allbrighton (GB 2,306,429 A) in view of Merritt (USPN 5,305,909).

Allbrighton discloses an anti-skinning layer that prevents the formation of a skin on the

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surface of paint, a formulation prone to skinning, in a tin (Page 1, lines 2 – 7). Since the anti-skinning layer could be used for any item that forms a skin on the surface, one of ordinary skill in the art would recognize that the combination of the container and the anti-skinning layer could be used to hold a water-based formulation. One of ordinary skill in the art would also recognize that the formulation has a certain concentration of water and solvent and since the disc blocks the air from contacting the surface of the formulation, the disc would maintain the concentration of both the formulation and the formulation vapor. However, Allbrighton fails to disclose the anti-skinning layer is constructed of material selected from the group consisting of woven polyolefin cloth, unwoven polyolefin cloth, gauze, artificial grass matting and glass fiber felt and the anti-skinning layer having a thickness of approximately 0.001 to 5 mm.

Merritt teaches a plastic bag having a thickness between 0.00025 and 0.03 inches (Column 3, lines 43 – 45) used in combination with a pusher element, a container sealing means, for the purpose of preventing the formation of a skin on the surface of paint in a tin (Column 2, lines 20 – 28) by keeping air from the outside environment from contacting the surface of the paint due to the fact that the membrane is contact with a portion of the inner surface of the can and the surface of the paint (Figure 3 and Column 2, lines 20 – 28) while allowing the formulation vapors of the paint to gather in the space between the bag and the side of the container (Figure 3, #30).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided anti-skinning layer having a thickness between 0.00025

and 0.03 inches in Allbrighton in order to prevent the formation of a skin on the surface of paint in a tin by keeping air from the outside environment from contacting the surface of the paint due to the fact that the membrane is contact with a portion of the inner surface of the can and the surface of the paint while allowing the formulation vapors of the paint to gather in the space between the bag and the side of the container.

Allbrighton discloses the claimed invention except for the material selected from the group consisting of woven polyolefin cloth, unwoven polyolefin cloth, gauze, artificial grass matting and glass fiber felt. It would have been obvious to one having ordinary skill in the art at the time the invention was made replace the foam layer in Allbrighton with one of the claimed materials, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. The foam layer of Allbrighton performs an equivalent function to the claimed materials since it is capable of absorbing both the formulation and formulation vapors. Therefore, one of ordinary skill in the art would readily determine that the foam performs an equivalent function to the foam depending on the desired end results and the absence of unexpected results.

10. Claims 59, 61, 73 and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allbrighton in view of Hamada et al. (USPN 4,347,948).



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Allbrighton discloses the claimed the invention above except for the anti-skinning layer being integrally molded to an internal surface of the container and the anti-skinning layer being thermally bonded to an internal surface of the container.

Hamada et al. teach either integrally molding or using thermal bonding a plastic sheet to the internal surface of the lid of a container (Column 4, lines 3 – 10 and Figure 2, #18) for the purpose of sealing the container so that it is air tight (Column 3, lines 64 – 68).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the sheet that is integrally molded or thermally bonded to an internal surface in Allbrighton in order to seal the paint container so that it is air tight as taught by Hamada et al.

11. Claims 60, 74, 80, 81, 84 and 117 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allbrighton in view of Burke et al. (USPN 4,625,883).

Allbrighton discloses the claimed the invention above except for the anti-skinning layer adhering to an internal surface of the container, the container comprising a second anti-skinning layer that extends about at least a portion of an internal surface of the container and the formulation and the second anti-skinning layer being located between a circumferential lip of the container and the water-based formulation.

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Burke et al. teach in one embodiment two layers to help prevent air contact with the paint (Figure 1, #10 and 18) where the first layer sits in the grooves at the opening of the can (Figure 1, #18) while the second layer is in contact with the formulation below the circumferential lip of the container (Figure 1, #10), and in another embodiment of the invention, the anti-skinning layer is adhered to the container in connection with the lid (Column 2, lines 32 – 41 and Figures 4 and 5, #10c) for the purpose of preventing a skin layer from forming on the surface of paint or a similar product in a stored container.

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the two layers of anti-skinning material and the grooves or adhering properties in Allbrighton in order to prevent a skin layer from forming on the surface of paint or a similar product in a stored container as taught by Burke et al.

12. Claims 83 and 85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allbrighton in view of Burke et al. as applied to claims 60, 74, 80, 81, 84 and 117 above, and further in view of Hamada et al. (USPN 4,347,948).

Allbrighton, as modified with Burke et al., discloses the claimed the invention above except for the anti-skinning layer being integrally molded to an internal surface of the container and the anti-skinning layer being thermally bonded to an internal surface of the container.

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Hamada et al. teach either integrally molding or using thermal bonding a plastic sheet to the internal surface of the lid of a container (Column 4, lines 3 – 10 and Figure 2, #18) for the purpose of sealing the container so that it is air tight (Column 3, lines 64 – 68).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the sheet that is integrally molded or thermally bonded to an internal surface in the modified Allbrighton in order to seal the paint container so that it is air tight as taught by Hamada et al.

13. Claim 82 is rejected under 35 U.S.C. 103(a) as being unpatentable over Allbrighton in view of Burke et al. as applied to claims 60, 74, 80, 81, 84 and 117 above, and further in view of Graham et al.

Allbrighton, as modified with Burke et al., discloses the claimed invention of an anti-skinning layer in a paint tin except for the second layer being textured.

Graham et al. teaches a membrane with a textured surface (Figures 5 – 8) in a painting tray for the purpose of allowing only a certain amount of paint to be in contact with the roller during the paint process.

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the textured surface in the modified Allbrighton in order to

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allow only a certain amount of paint to be in contact with the roller during the paint process as taught by Graham et al.

14. Claims 86 and 87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allbrighton in view of Gunderson (USPN 5,249,692).

Allbrighton discloses the claimed invention of an anti-skinning layer in a paint tin except for an integrally molded series of space apart concentric ribs integrally molded to a plastics container between the top of the container proximate the sealing means to at least the formulation level and where the integrally molded series of ribs extend from the top of the internal surface of the container proximate to the sealing means substantially to the container base.

Gunderson teaches an anti-skinning layer formed with concentric ribs (Figure 1, #10) that sits between the top of the container and the level of the formulation (Figure 3, #10) for the purpose of keeping the curable liquid from being exposed to air, thereby eliminating skinning when the container is partially full.

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the concentric ribs on the anti-skinning layer of Allbrighton in order to keep the curable liquid from being exposed to air, thereby eliminating skinning when the container is partially full as taught by Gunderson.

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15. Claims 116, 119 and 120 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allbrighton in view of Merritt as applied to claims 56, 70, 107, 108, 110, 111, 113 and 118 above, and further in view of Hamada et al. (USPN 4,347,948).

Allbrighton, as modified with Merritt, discloses the claimed the invention above except for the anti-skinning layer being integrally molded to an internal surface of the container and the anti-skinning layer being thermally bonded to an internal surface of the container.

Hamada et al. teach either integrally molding or using thermal bonding a plastic sheet to the internal surface of the lid of a container (Column 4, lines 3 – 10 and Figure 2, #18) for the purpose of sealing the container so that it is air tight (Column 3, lines 64 – 68).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the sheet that is integrally molded or thermally bonded to an internal surface in the modified Allbrighton in order to seal the paint container so that it is air tight as taught by Hamada et al.

#### ***Response to Arguments***

16. Applicant's arguments filed February 17, 2004 have been fully considered but they are not persuasive.

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In response to applicant's argument that Allbrighton, Graham, Burke and Merritt fail to disclose retaining a layer of formulation without excluding the formulation vapor in the container from contacting the formulation, all four prior art references allow vapor from the formulation to be in contact with formulation, and do not exclude the vapor, (see the respective rejections above); however, they do inhibit the addition of more air from the outside environment, which is not covered by the claim limitations. Even though more air is prohibited from entering into the container, there is air located between the anti-skinning layer and the formulation surface, which contains the formulation vapor.

In response to Applicant's argument that the prior art fails to disclose the anti-skinning layer entirely on an internal surface, it is the Examiner understanding of the claim limitation that Allbrighton, Graham and Burke all meet this limitation since the anti-skinning materials are located completely within the interior of the tin can, thereby they are entirely on an internal surface of the container, i.e. resting against the inside walls of the container.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (571) 272-1496. The examiner can normally be reached on Mon.-Thurs. from 7:00-4:30 & alternate Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patricia L. Nordmeyer  
Examiner  
Art Unit 1772

*pln*  
pln

*[Signature]*  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

3/11/04